



Washington, D.C. 20548

## Decision

Matter of: W.H. Smith Hardware Company

File: B-224573

Date: November 12, 1986

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### DIGEST

1. Failure to adequately notify protester of award, and exercise of option at time of award, is merely a procedural deficiency and does not affect the validity of an otherwise properly awarded contract.
2. Where solicitation specifies that bids will be evaluated by totaling the prices for the basic quantities and option quantities exercised at time of award, a protester who submits the low price for the basic quantities but not for the option quantities exercised is not in line for award since it did not offer the lowest total price.
3. Clause in solicitation allowing contractor to voluntarily reduce option price or delivery time does not apply to allow a bidder, whose bid is not yet accepted, to reduce option price after bid opening.
4. Exception allowing consideration of late modification of an otherwise successful bid does not apply to a protester whose bid was not low. A bidder may not revise its bid price downward, after bid opening, where the revision has the effect of displacing the low bid of another bidder.
5. Allegation that awardee may have negotiated its option price, contrary to sealed bidding principles, is unsubstantiated where record indicates that option price, upon which option was exercised at time of contract award, was same as that contained in awardee's low bid upon bid opening.

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### DECISION

W.H. Smith Hardware Company protests the award of a contract to Titan Industries under invitation for bids (IFB) NO. DLA700-86-B-0551, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio. This contract is for

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the supply of 1,163 hose assemblies, including 420 units designated by the exercise of an option at the time of contract award.

We deny the protest.

The invitation notified bidders that options exercised at the time of award would be used in evaluating the total price for purposes of determining the low bid. The DCSC evaluated bids on the basis of the basic quantities and those option quantities exercised at time of award. The bids in question were as follows, with W.H. Smith's attempted option price reduction, and resulting total, in parentheses:

	<u>Titan</u>	<u>W. H. Smith</u>
Basic Quantity	\$183,843.00	\$183,662.17
Option Quantity	<u>104,580.00</u>	<u>112,219.80</u> ( 103,819.80)
Total	\$288,423.00	\$295,881.97 (\$287,481.97)

W.H. Smith asserts that the notice to unsuccessful bidders, which it received, failed to adequately indicate that an option had been exercised at time of contract award. W.H. Smith, therefore, concludes that DCSC did not properly exercise the option and, thus, should not have evaluated the option prices in determining the low bid. As a result, W.H. Smith argues that it should receive the award for the basic quantities since its bid was low for those items. However, even though W.H. Smith may not have known at the time, an option for 420 additional units in fact was exercised at the time of contract award, as indicated in the award notice sent by DCSC to the awardee, Titan Industries. We have held that an agency's failure to notify an unsuccessful bidder that an award had been made is merely a procedural deficiency and does not affect the validity of an otherwise proper award. See L.L. Rowe Co., B-220973, Feb. 27, 1986, 86-1 C.P.D.

¶ 204. No different result should obtain where, as here, the agency did notify the protester of the award to another bidder but the information in the award notice was incomplete. Compare Aero Products Research, Inc., B-191544, Sept. 7, 1978, 78-2 C.P.D. ¶ 176 (where misstated discount terms in notice of award did not affect validity of award). Furthermore, where a solicitation specifies that bids will be evaluated by totaling the prices for basic and option quantities, a protester who submits the low price for the basic quantities, but not the low total price, is not in line for award. See AC, Inc., B-215993, Dec. 31, 1984, 85-1 C.P.D. ¶ 4. Thus, DCSC properly evaluated the option quantities, exercised at time of award, in determining the low bid and correctly awarded the contract to Titan Industries, as low bidder.

W.H. Smith nevertheless asserts that its bid is low even if the option quantities are evaluated since it attempted to reduce its option price after bid opening by taking advantage of a clause in the solicitation which states that "prior to option exercise, the contractor voluntarily may reduce option price or improve delivery time by written advice to the contracting officer." This clause applies only to a contractor who has received the award, permitting downward revision of the option price prior to exercise of the option. See Milwaukee Valve Co., Inc., B-205937, June 14, 1982, 82-1 C.P.D. ¶ 575. W.H. Smith was not the "contractor" at the time it attempted to reduce its option price, but merely a bidder whose bid had not yet been accepted. Thus, W.H. Smith's attempted reduction of its option price, after bid opening, was ineffective under this clause.

Even as a post-bid opening modification, W.H. Smith's option price reduction is ineffective since modifications of bids received after bid opening are not to be considered unless they fall within one of the exceptions listed in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7 (1985), which was incorporated by reference in the solicitation. The exceptions available under this section permit consideration of a late modification when 1) the modification was sent by certified mail no later than the fifth calendar day before bid opening, or 2) the modification was sent by mail and late receipt was due solely to mishandling by the government, or 3) the modification is of an otherwise successful bid making its terms more favorable to the government. None of these exceptions is available to permit consideration of W.H. Smith's late modification. The record does not indicate that Smith's modification was sent by certified mail or that the late receipt was the result of government mishandling. Since both the basic and option quantities were evaluated in determining total price, W.H. Smith's bid was not low and, thus, was not the otherwise successful bid within the meaning of the third exception to the late modification rule. See United Baeton International, B-200721, Feb. 2, 1981, 81-1 C.P.D. ¶ 59. In addition, a bidder may not revise its bid price downward, after bid opening, where the revision has the effect of displacing the low bid of another bidder. To allow this would be tantamount to permitting submission of a second bid after bid opening, contrary to sealed bidding principles. See Milwaukee Valve, B-205937, *supra* at 3. Therefore, W.H. Smith's attempted option price reduction was properly excluded from the evaluation of its total price.

Finally, W.H. Smith alleges that the awardee, Titan Industries, may have negotiated its option price subsequent to bid opening, contrary to sealed bidding principles. This allegation is without merit since the record indicates that

the option price, upon which the option was exercised at time of contract award, is the same as that contained in Titan's low bid upon bid opening. Thus, W.H. Smith's allegation of improper price negotiation is unsubstantiated.

The protest is denied.

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